IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6672 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIROZ RAZAKKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6672 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR SS PATEL, AGP, for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 09/01/2002

ORAL JUDGEMENT

1. The Commissioner of Police, Surat City, Surat, passed an order on the 17th July, 2001, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the petitioner under the provisions of the said

Act.

2. The detaining authority took into consideration only one registered offence against the petitioner vide C.R. No.5121 of 2001, D.C.B. Police Station, Surat, and statements of two anonymous witnesses recorded on the 23rd June, 2001 and verified on the 5th July, 2001 and branded him as a bootlegger. The detaining authority observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to a conclusion that detention under PASA Act is the only remedy that can be resorted to.

3. Learned advocate for the petitioner, Mr. Prajapati assails this order on the ground that the offence is dated the 24th March, 2001 and the order is passed on the 17th July, 2001 and, therefore, there is no livelink. He further submitted that though the statements of anonymous witnesses were verified on the 5th July, 2001, the order is passed only only the 17th July, 2001, i.e. after 12 days. This delay in passing the order even after the verification of statements of witnesses has vitiated the impugned order of detention. He, therefore, urged that the petition may be allowed.

4. Mr. S.S. Patel, learned Assistant Government Pleader, has opposed this petition.

5. There is no dispute about the factual aspects. The offence which is relied upon as a ground for detention is of 24.3.2001 and, therefore, is a stale incident which cannot form a valid ground for detention as there is no livelink between the activities of the detenu and the order of detention. So far as the statements are concerned, thery were verified on 5.7.2001 and the order was passed on 17.7.2001, i.e. 12 days after the verification. The delay in passing the order after verification of the statements of the witnesses has vitiated the subjective satisfaction recorded by the authority that in order to immediately prevent the petitioner from pursuing his illegall activities, he is required to be detained under the PASA Act. This petition, therefore, deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention dated the 17th July, 2001, passed against the detenu is hereby quashed and set

aside. The detenu-Firoz Razakhan Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no orders as to costs.

7. Direct service is permitted.

[A.L. DAVE, J.]

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